SUPREME COURT, U. S.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966

No. 1149

IN THE MATTER OF THE APPLICATION

OF

PETER S. HUSSEY,

Petitioner,

against

MICHAEL N. PETITO, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO COURT OF APPEALS OF THE STATE OF NEW YORK

STEPHEN L. HOFFMAN,
Attorney for Petitioner,
No. 855 Avenue of the Americas,
New York, N. Y. 10001.

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The petitioner Peter S. Hussey prays that a Writ of Certiorari issue to review an order of the Court of Appeals of the State of New York, dated December 29, 1966 which affirmed an order of the Supreme Court of the State of New York, Appellate Division, Second Department, dated January 31, 1966, which latter order affirmed a determination of the Town Board of Oyster Bay, the respondents

herein, discharging the petitioner as Superintendent of Parks of the Town of Oyster Bay.

The Opinions Below

The Court of Appeals of the State of New York made no opinion in this matter. Its order is printed in Appendix A hereto, pages 10-12. The opinion of the Appellate Division, Second Department of the State of New York has not been officially reported. The order and opinion are printed in Appendix A hereto, pages 13-15. The determination of the Respondents herein is printed in Appendix A, pages 16-28, *infra.*

Jurisdiction

The order of the Court of Appeals of New York was entered on December 29, 1966. The order of the Appellate Division, Second Department, State of New York, was entered on the 31st day of January, 1966. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257.

Questions Presented

1. May the constitutional rights of an individual be preserved if he is subjected to a hearing, by accusers, who act at such hearing, as his judges, and who testify at such hearing, as witnesses, and who refuse to designate others to act in their place as judges, under a statute permitting them to do so?

2. May the respondents deprive the petitioner of his constitutional rights to due process and to a trial according to the law of the land, by

(a) Refusing to admit or consider evidence as to the bias and prejudice of the hearing officers; and

(b) Refusing to abide by a statute of limitation affecting admissible evidence; and

(c) Refusing to consider the illegality of the Code of Ethics of the Town of Oyster Bay, which allegedly was adopted unconstitutionally.

Statutes Involved

The statutes involved in the instant case are Section 75 of the Civil Service Law of the State of New York and the due process clauses of the New York State and Federal Constitutions.

Statement

The petitioner became an employee of the Town of Oyster Bay in 1955. He was designated Superintendent of Parks for the Town of Oyster Bay on January 1, 1959. Shortly thereafter, he was blanketed into a Civil Service status. He was suspended from his position on May 26, 1964 and served with written specification of charges, under Section 75 of the Civil Service Law in March of 1965. On June 15, 1965, at the hearings held by them, the respondents found the petitioner, guilty of 4 of the 8 charges brought against him. By determination dated June 15, 1965, they discharged the petitioner from his position.

Included among the charges set forth in the specifications are specific acts of misconduct and conflicts of inter-

est based on alleged violations of the Code of Ethics adopted by the Town of Oyster Bay.

Petitioner claimed that he was innocent of all the charges brought against him and that all of his actions were innocent of any evil intent and did no harm or damage to his employer.

The petitioner claimed prior to the holding of the hearings and during the hearings that the respondents were disqualified to act as the hearing officers, not only because they were his accusers, but also because they had been subpoened to testify as witnesses to material matters. Petitioner claimed that Section 75 of the Civil Service Law authorized the respondents to designate others to act in their place, to conduct the hearings at which they were called upon to testify.

Petitioner claimed that the respondents were not impartial and had prejudged the matter and had predetermined the controversy existing, and could not, and did not, conduct the hearings, properly or fairly. Petitioner claimed that the findings were made contrary to the weight of the evidence, that the penalty fixed by the respondents was excessive and constituted an abuse of discretion. Petitioner further claimed that the Code of Ethics had been unconstitutionally adopted or enacted, and had no standing before the Court.

Reasons for Granting the Writ

1. This case involves novel and substantial questions which should be resolved by this Honorable Court. The decision by the Court below offends against the whole

theory of substantial justice under the due process provisions of the Constitutions of the State of New York and the Federal Government. It is a fundamental view of our common law that no person may be adjudged guilty and punished upon a charge of wrongful conduct without a fair hearing. The case may not be prejudged and no man may be both accuser and judge, otherwise a hearing becomes a fiction, and no fiction can destroy constitutional guaranties.

However, it is recognized that necessity at times dictates an exception to the rule. Necessity, however, must sustain close examination to deprive an individual of a right guaranteed by the constitution, or to impose upon any person, the consequences of guilt, upon which a fair hearing has not been accorded.

In this regard reference is made to those situations where by legislative intent, a statute dictates that only a certain person or persons are empowered or authorized to act as hearing officers or judges.

In the instant case, there is no such problem. The applicable statute makes provision for the delegation of the power of hearing the charges, to other than the interested parties.

The refusal of the respondents to delegate such powers to others constituted a gross miscarriage of justice, and violated the legal principle and the fundamental right of an accused to a fair and impartial trial under the law of the land.

The decision of the Court of Appeals, in this case, negates completely its ruling, stated in *Sharkey* v. *Thurs-*

ton, 268 N. Y. 123, 196 N. E. 766, and violates the constitutional rights of the petitioner to a fair and impartial hearing.

Similarly, the decision complained of is in conflict with the enunciation of the principles of law stated by this Court in *Wong Yang Sung* v. *McGrath,* 339 U. S. 33.

2. The testimony of the Respondents, in this case was material and necessary. They left their seats as hearing officers to sit in the witness chair. After testifying, they returned to their seats as hearing officers to judge their own accusations against the petitioner.

Surprisingly, the sworn evidence given by each respondent, is in sharp conflict with their collective determination.

The whole spectacle of changing chairs, and interchanging opinions as witnesses and judges, does not support the concept or reality of justice, granted to all, under the laws of our land.

3. Waiving the disqualification of the respondents to conduct the hearings in question, we are faced with the added problem as to the manner in which the hearings were conducted. There can be no question that a defendant who does not receive a fair trial is in no better position than a defendant who receives no trial. To permit evidence to go into the record, which is clearly prohibited by a statute of limitations applicable to the facts and circumstances involved in the hearing, and in general, to so conduct hearings as to clearly reveal the bias and prejudice of the hearing officers, demonstrates clearly the inequitable treatment accorded the petitioner in this case.

4. The final question submitted for the consideration of this Court is the claim that the Code of Ethics of the Town of Oyster Bay was improperly and illegally adopted by the respondents. This fact becomes material in that the basis for some of the charges on which the petitioner was found guilty are based on the said Code of Ethics.

The preamble to the said Code of Ethics reads as follows: "RESOLUTION ADOPTING CODE OF ETHICS FOR OFFICERS, AGENTS AND EMPLOYEES OF OYSTER BAY

WHEREAS, by Local Law #9 1963, effective on the 22nd day of July, 1963, the County of Nassau has enacted a Code of Ethics with respect to the conduct of officers, agents and employees of said County in the conduct of their official duties; and

WHEREAS, it is desirable that such a Code of Ethics be adopted by the Town of Oyster Bay to apply to its officers, agents and employees in manner and form substantially similar to that heretofore adopted by said County of Nassau;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Oyster Bay does hereby adopt the following to be known as 'The Code of Ethics for Officers, Agents and Employees of the Town of Oyster Bay':"

It may be noted that Local Law #9 referred to, is the enabling statute authorizing the adoption of a Code of Ethics by the County of Nassau, not the Town of Oyster Bay. In fact, the Town of Oyster Bay had no legal authority to enact or adopt a Code of Ethics until Section

800 of the General Municipal Law of the State of New York became effective on September 1, 1964. Section 806 of such statute specifically authorized the adoption of a Code of Ethics by governmental units such as the Town of Oyster Bay.

Prior to this enactment there was no statutory or other legal basis permitting the enactment or adoption of any Code of Ethics by the respondents herein. Such purported action on their part was illegal, ultravires and unauthorized.

The novel questions presented by this petition should be resolved by this Court. The importance of emphasizing the rights of individuals to a fair trial and to due process under the laws of our land will not only provide guideposts in this field, but will re-enforce those fundamental rights on which our whole system of jurisprudence is based.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

STEPHEN L. HOFFMAN,
Attorney for Petitioner,
No. 855 Avenue of the Americas,
New York, N. Y. 10001.

APPENDIX

Civil Service Law

SECTION 75.

2. Procedure. A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him and shall be allowed at least eight days for answering the same in writing. The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is so designated, he shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his recommendations, be referred to such officer or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him to be represented by counsel, and shall allow him to summon witnesses in his behalf. The burden of proving incompetency or misconduct shall be upon the person alleging the same. Compliance with technical rules of evidence shall not be required.

4. Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than three years after the occurrence of the alleged incompetency or misconduct complained of and described in the charges provided, however, that such limitation shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime."

Order of Court of Appeals

State of New York, ss:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 29th day of December in the year of our Lord one thousand nine hundred and sixty-six, before the Judges of said Court.

Witness,

The HON. CHARLES S. DESMOND,
Chief Judge, Presiding.

RAYMOND J. CANNON,
Clerk.

Remittitur December 29, 1966.

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2. No. 355. 66

In the Matter of

PETER S. HUSSEY,

Appellant,

vs.

MICHAEL N. PETITO, & ors.,

Respondents.

BE IT REMEMBERED, That on the 19th day of August in the year of our Lord one thousand nine hundred and sixty-six, Peter S. Hussey, the appellant — in this cause, came here unto the Court of Appeals, by Stephen L.

Hoffman, his attorney —, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And Michael N. Petito, & ors., the respondents in said cause, afterwards appeared in said Court of Appeals by Attilio E. Braune, their attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals, this cause having been submitted, after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, without costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and

provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

RAYMOND J. CANNON
Clerk of the Court of Appeals of the
State of New York.

Court of Appeals, Clerk's Office,
Albany, December 29, 1966.

I Hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

RAYMOND J. CANNON
Clerk.

[Seal]

Order of Appellate Division, Second Department

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 31st day of January, 1966

Present—
HON. HENRY L. UGHETTA,
Acting Presiding Justice.
" MARCUS G. CHRIST,
" ARTHUR D. BRENNAN,
" L. BARRON HILL,
" JAMES D. HOPKINS,
Justices.

Order Confirming Determination

In the Matter of

PETER S. HUSSEY,

Petitioner,

v.

MICHAEL N. PETITO, *et al.*,

Respondents.

An application having been made by the above named Peter S. Hussey, petitioner in this proceeding, by petition verified July 8, 1965, to annul determination of respond-

ents and for his reinstatement to the position of Superintendent of Parks for the Town of Oyster Bay, Nassau County, from which he was discharged after a hearing; the matter having been transferred to this court for disposition by order of the Supreme Court, Nassau County, entered August 16, 1965 pursuant to statute (CPLR 7804, subd. [g]); and the matter having been argued by Mr. Stephen L. Hoffman of Counsel for petitioner and by Mr. Nathaniel G. Cole of Counsel for respondents; and due deliberation having been had thereon; and upon the opinion and decision slip of the court herein, heretofore filed and made a part hereof:

It is Ordered and Adjudged that the determination be and the same hereby is unanimously confirmed, without costs.

Enter:

Herman M. Pogul
Acting Clerk.

Opinion of Appellate Division, Second Department

By Ughetta, Acting P.J.; Christ, Brennan, Hill and Hopkins, JJ.

Matter of Hussey (Petito)—Proceeding pursuant to article 78 of the CPLR for reinstatement of petitioner to the position of Superintendent of Parks for the Town of Oyster Bay, Nassau County, from which he was discharged after a hearing. The matter was transferred to this court for disposition by order of the Supreme Court, Nassau County, entered August 16, 1965, pursuant to statute (CPLR 7804, subdivision [g]). Determination confirmed, without costs. Petitioner, because of his conflict of interests, was removed from his public position. In our opinion his private business relationships with a prime town contractor and his private business dealings with suppliers of products to the town were improper. Petitioner's private business placed him in a dual role, since his personal financial interests could have been antagonistic to his public responsibility in superintending the work of those performing contracts for the town and in approving claims by them against the Town. It matters not that, as has been claimed, the town did not suffer pecuniary loss. The board was wholly justified in removing an employee who assumed the ambivalent position here presented. To insure honest, and sound administration of its governmental responsibilities, a municipality must have the power of removal where an employee's simultaneous public responsibilities and personal business interests provide him with the easy opportunity for improper conduct or gain. We have considered all the other points raised in this proceeding and find it unnecessary to expressly comment upon them.

Determination of Respondents

RESOLUTION #800—1965

Meeting of June 15, 1965

WHEREAS, pursuant to the provisions of Section 75 of the Civil Service Law, charges and specifications were served upon Peter S. Hussey, charging him with acts of misconduct and improper conflict of interest in connection with his position as Superintendent of Parks of the Town of Oyster Bay; and

WHEREAS, a disciplinary hearing was held before the entire Town Board and which said hearing was made public at the request of Mr. Hussey and which said hearing commenced on April 15th and terminated on May 6, 1965, and consumed six (6) days of the presentation of evidence and testimony amounting to approximately 800 pages.

NOW, THEREFORE, BE IT RESOLVED, that upon hearing the testimony herein and a review of the exhibits and evidence submitted in this said hearing, this Board herein makes the following findings and determinations;

RESOLVED, that no findings are made herein as to the respondent's guilt or innocence as to the acts charged in Charge #1, Charge #3, Charge #4, or Charge #7, nor as to any acts included anywhere in the statement of charges, which occurred three (3) years prior to the service of the said charges. Therefore, in arriving at the findings and determination, the Board has passed upon only those acts

of misconduct and conflict of interest referred to in the charges which occurred within three (3) years of the date of the service of the said charges. By doing so, the Board does not intend to acknowledge that it is precluded from passing upon the said acts which preceded the three (3) year period, particularly since the respondent did not have the required Civil Service status during the said period. However, the Board has determined that it is not necessary to pass upon those acts which preceded the said three year period because the Board herein determines that those acts of misconduct and conflict of interest, which occurred within the three (3) year period are of such a serious and substantial nature, which if proven, would necessarily require that the employment of the respondent, Peter S. Hussey, with the Town of Oyster Bay be terminated on the basis of these charges alone, without the necessity of considering or making a determination regarding those acts of misconduct which preceded the said three (3) year period.

Charge #2

Charge #2-a

The evidence clearly establishes that the respondent Peter S. Hussey is guilty of misconduct in that there existed an improper conflict of interest insofar as his duties as Superintendent of Parks in the Town of Oyster Bay and the continuation of a relationship between his private firm, G. A. R. Specialists, Inc., and that of Park and

Estates Maintenance Co., even after the respondent's firm, G. A. R. Specialists, Inc., moved from the building next door to Park and Estate Maintenance in Farmingdale to a new location in Hicksville, which charge was substantiated by the testimony taken at the hearing including admissions by the respondent as well as Town Exhibit No. 26a through e, which relate to the payroll earnings records of Park and Estate and the cancelled payroll checks of G. A. R. Specialists, Inc., which show that the same employees worked for both G. A. R. Specialists, Inc. and Park and Estate Maintenance Co., and in some instances during the same periods so that this was not a situation of where an employee would terminate his employment with one company and seek new employment with another company. There actually existed a pattern wherein the same employee would at one time work for G. A. R. Specialists, Inc., and at another time work for Park and Estate Maintenance and then return to work for G. A. R. Specialists, Inc., and visa-versa.

Charge #2-b

The evidence clearly establishes that there was a continuing relationship between Philip Begley, owner of Park and Estate Maintenance Company and G. A. R. Specialists, Inc., since both firms had an arrangement whereby there was an interchange of personnel, as outlined in Charge No. 2a above.

Determination of Respondents

Charge #2-c

This Board finds that the evidence clearly establishes that respondent is guilty of the acts as charged in Charge #2-c and that due to this conflict of interest that existed, respondent could not and did not properly perform the duties of the Superintendent of Parks for the Town's best interest could not be served by a Superintendent of Parks whose own private concern was engaged in a relationship with the firm of Park and Estate Maintenance Company, which company held the mowing contract for the parks of the Town of Oyster Bay and pursuant to the provisions of the said contracts, the Superintendent of Parks was charged with responsibility of proper enforcement of its requirements such as being certain that Park and Estate Maintenance mowed the lawns the number of times required in the Contract as well as being maintained according to its specifications and provisions. The evidence clearly shows both by exhibits and testimony of the foremen as well as admissions by the respondent, Peter S. Hussey, that the required supervision of the Contract was never performed by the respondent, Peter S. Hussey, or delegated by him to any of the Park Department foremen.

Charge #2-d

The Board finds that the evidence clearly establishes that the respondent is guilty of the acts as charged in Charge 2-d; he failed to disclose to the Town Board his interest in the said corporation known as G. A. R. Specialists, Inc., nor did he disclose the business relationship that

existed between he and his firm and Philip Begley of Park and Estate Maintenance Company. This charge is substantiated both by the respondent's own testimony as well as that of the Town Clerk, that no disclosure was filed in his office, as set forth on page 39 of the transcript of testimony taken at the hearing of April 15, 1965.

Further, the Board finds that these acts as referred to in Charge #2 are serious and substantial acts of misconduct and that the respondent was remiss in the proper performance of his duty and in the trust placed in him as Superintendent of Parks charged with the responsibilities of preparing specifications for the award for mowing contract as well as making recommendations for the actual award of bids and in addition thereto, supervising the performance of the Contract for mowing in all of the parks in the Town of Oyster Bay and these acts of misconduct further compounded by the fact that the conflict of interest as existed was never disclosed to the Town Board and all of these aforesaid acts occurred within the three (3) year period prior to the service of charges upon respondent Peter S. Hussey.

CHARGE #5

Charge #5-a

FURTHER RESOLVED, that the evidence clearly establishes that the respondent is guilty of the acts as charged in Charge #5-a, namely; that while acting in his capacity as Superintendent of Parks, Town of Oyster Bay, he also on behalf of G. A. R. Specialists, Inc., entered into contracts

with, and performed work, labor and services for vendors doing business with the Town of Oyster Bay, and G. A. R. Specialists, Inc., received valuable consideration therefor. The acts referred to and which occurred within the three year period was substantiated by the testimony and evidence submitted at the hearing, such as Town Exhibits #28a consisting of Town of Oyster Bay claim forms for payment of purchases by the Park Department from the "American Playground Device Co." which were approved for payment by the respondent in his capacity as Superintendent of Parks, and also by G. A. R. Specialists, Inc., sales invoices to the same "American Playground Device Co." as indicated in the said exhibit. Further reference is made to Town's Exhibit #28b referring to similar exchanges with the vendor known as R. E. Austin & Son; Town's Exhibit #28c relating to similar claim forms for payment and G. A. R. Specialists, Inc., sales invoices relating to the vendor J. S. McHugh Specialists, Inc., Town's Exhibit #28d relating to claim forms to the Town and G. A. R. Specialists, Inc., sales invoices with the vendor known as Safeway Steel Scaffold Supply; and Town's Exhibit #28e relating to claim forms to the Town and G. A. R. Specialists, Inc., sales invoices to E. Parker Yutzler.

Charge #5-b

The respondent is further determined to be guilty of the acts as charged in Charge #5-b in that he prepared specifications and recommended award of bids for park equip-

ment to companies which were doing business with the Town of Oyster Bay and for which G. A. R. Specialists, Inc., had entered into contracts to perform work, labor and services. This was clearly established by the evidence and testimony submitted at the said hearing, such as, but not limited to the following exhibits:

Town's Exhibit #35a and #35b which established that E. Parker Yutzler, Inc., is the factory representative of the J. E. Burke Co. for the Counties of Nassau and Suffolk in Long Island, New York;

Town's Exhibit #38 dealing with certain of the Town requisitions for the year 1962 in which the respondent specified the recommended maker of the recreational equipment;

Town's Exhibit #30 relating to similar requisitions for 1963;

Town's Exhibit #29a, #29b, #29c, #29d, #29e which referred to purchases of playground equipment for the Park Districts by the Town of Oyster Bay and wherein the respondent recommended acceptance of bids of firms with which G. A. R. Specialists, Inc., was also doing business, such as; American Playground Device Co., E. Parker Yutzler and J. S. McHugh.

All these conflicts of interest are further compounded by the fact that at no time did the respondent disclose his relationship with these firms to the Town Board. The Board further determines that all of these acts of mis-

conduct and conflict of interest which occurred within the said three year period are of a very serious and substantial nature and were detrimental to the best interests of the Town.

CHARGE #6

The respondent is further determined to be guilty of Charge #6 Subdivisions (a), (b) and (c) thereof, in that he committed acts constituting a violation of the Town of Oyster Bay Code of Ethics since its effective date, namely August 27, 1963.

Charge #6 (a) states that the respondent through his firm, G. A. R. Specialists, Inc., performed work, labor and services for companies which were also vendors doing business with the Town of Oyster Bay Park Department and which department was under the supervision of the respondent. In addition to the evidence and testimony submitted at this hearing, some of the exhibits which substantiate this charge are the following:

Town's Exhibit #30a relating to claim forms for payment by R. E. Austin & Sons, approved by Peter S. Hussey, as well as sales invoices by G. A. R. Specialists, Inc., for services furnished to the said R. E. Austin & Sons, and these exhibits show that these acts were committed between 12/13/62 and 3/25/64.

Further substantiation is shown by Town's Exhibit #30b relating to town claim forms and G. A. R. Specialists, Inc., sales invoices referring to the vendor, J. S. McHugh during the year 1963.

Determination of Respondents

Town's Exhibit #30c refers to claim forms and G. A. R. Specialists, Inc., sales invoices relating to the vendor, E. Parker Yutzler, during the period 1963 to 1964.

Charge #6 (b). In addition to other evidence and testimony submitted at the hearings some of the exhibits which substantiate the determination that the respondent is guilty of the acts charged in Charge #6, subdivision (b) are Town's Exhibit #37, Park Department Requisitions covering the period 1964; and Town's Exhibit #31 relating to a 1964 contract for the purchase of recreational equipment, which included the award of bids to firms with which G. A. R. Specialists, Inc. was also doing business; and establishing that the respondent was guilty of the acts constituting a conflict of interest and misconduct in violation of the Code of Ethics of the Town of Oyster Bay, in that he prepared specifications and recommended award of bids to companies from the Town of Oyster Bay and for which G. A. R. Specialists, Inc. was performing labor, works and services.

Charge #6 (c) Respondent is guilty of the acts charged in Charge #6, Subdivision (c), in that he failed to disclose to the Town Board his interest in G. A. R. Specialists, Inc. and the relationship with Park & Estate Maintenance Co. and/or Philip Begley, which is supported by the testimony of the Town Clerk, page 39 of the transcript of April 15, 1965 hearing, and also the testimony of respondent, Peter S. Hussey, as indicated on pages 142 and 144 of the transcript of the hearing date of May 6, 1965, at which time

he admitted that he did not advise the Town Board members, or any town official that G. A. R. Specialists, Inc. was doing business with E. Parker Yutzler, Inc., J. S. McHugh, or other vendors of the town.

The Board further determines that all of these acts of misconduct and conflict of interest, which occurred within the said three year period, are of a very serious and substantial nature and were detrimental to the best interests of the town.

The seriousness of the acts of misconduct and conflict of interest are further compounded by the fact that the respondent continued with this conduct even after the adoption of the said Code of Ethics, which by its provisions specifically prohibited the same.

CHARGE #8

Upon the basis of the testimony submitted at the hearing and all the applicable evidence and exhibits introduced at the said hearing, the Board herein determines that the respondent did not properly perform the duties of Superintendent of Parks, by reason of his acts of misconduct and conflict of interest. These acts of misconduct, conflict of interest and non-disclosure are not mere trivial violations, but are of a very substantial nature and adversely affect the best interests of the Town. The Board also finds that such conduct fails to meet the high standards of conduct required of the person occupying the important public office of Superintendent of Parks. It is of note that during the year 1962, the Town of Oyster Bay

paid Park & Estate Maintenance Co. under the mowing, aeration and fertilization contracts the sum of $83,306.25, which services were to be performed under the supervision of the respondent in his capacity as Superintendent of Parks, and during the same year 1962, the respondent's firm G. A. R. Specialists, Inc. and the firm of Park & Estate Maintenance Co. had an arrangement for exchange of personnel and the evidence clearly establishes that this was a continuing arrangement whereby employees would work for one company then the other without any termination of his employment and rehiring by the other. During the year 1963, the Town's Exhibit #26e shows that the same arrangement existed between Park & Estate Maintenance Co. and G. A. R. Specialists, Inc., at least so far as one employee is concerned, in that he worked for Park & Estate Maintenance Co., then G. A. R., then back to Park & Estate, during the same year, and during the year 1963, the Town paid the sum of $94,840.96 to Park & Estate Maintenance under the provisions of the mowing, aeration and fertilization contracts relating to the parks of the Town of Oyster Bay. During this entire period of time, the respondent was involved in preparation of the bid specifications for the mowing contracts and made recommendations for the award of bids of these contracts to Park & Estate Maintenance, in its capacity of low bidder, the respondent was also charged with responsibility of supervising the provisions of said contracts and in addition thereto, consistently recommended that it is in the best interest of the town to have these mowing serv-

ices performed by private contracts rather than by town employees.

FURTHER RESOLVED, that this Board determines that the respondent, Peter S. Hussey, is GUILTY of the charges as set forth herein of misconduct, conflict of interest, and improperly performing the duties of the position of Superintendent of Parks; and

FURTHER RESOLVED, that all motions of respondent contrary to this determination during, and submitted in the summation and formal motion at the conclusion of the hearing, are hereby denied,

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the employment of Peter S. Hussey, be and it is hereby terminated effective immediately.

The foregoing resolution was declared adopted after a poll of the members of the Board, the vote being recorded as follows:

Supervisor Petito	Aye
Councilman Post	Aye
Councilman Allsopp	Aye
Councilman Sisia	Aye
Councilman Ocker	Aye
Councilman Poulos	Aye
Councilman Grunewald	Aye

Determination of Respondents

STATE OF NEW YORK,
COUNTY OF NASSAU,
TOWN OF OYSTER BAY—ss.:

I, WILLIAM B. O'KEEFE, Town Clerk of the Town of Oyster Bay, and custodian of the Records of said Town, DO HEREBY CERTIFY that I have compared the annexed with the original Resolution #800—1965, adopted by the Town Board on June 15, 1965 terminating the employment of Peter S. Hussey, Superintendent of Parks filed in the Town Clerk's Office and that the same is a true transcript thereof, and of the whole of such original.

[SEAL]

In Testimony Whereof, I have hereunto signed my name and affixed the seal of said Town this 16th day of June, 1965

WILLIAM B. O'KEEFE
Town Clerk.